IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 8 of 1990
With
SECOND APPEAL No. 9 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
AVCHAL GOVIND - Defendant(s)

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Appearance :
MR LR PUJARI, ASSTT.GOVERNMENT PLEADER for Appellant(s) : 1,
MRS PAHWA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/03/2007

ORAL JUDGMENT

1. This order shall dispose of Second Appeals No. 8 of 1990 and 9 of 1990.

2. The short facts necessary for disposal of the present appeals are that the respondent-plaintiff Avchal Govind, who was employed as Assistant Head Cook with the District Police Headquarters, on 10.6.77 at about 3.00 p.m., asked one Bai Rehmat Meti, a widow to sit in his house and when she refused to oblige the plaintiff, he brandished a knife and threatened her to kill. The authorities, on a complaint, found that the conduct was unbecoming of a person serving in the police department and amounted to moral turpitude and issued a charge sheet on 24.11.78. Regular inquiry was conducted and after finding him guilty, a notice to show cause was issued and ultimately, he was removed from service on 24.9.79. The appeal filed by the plaintiff came to be dismissed, therefore, he filed Civil Suit No. 585 of 1981. The said Civil Suit was contested by the present appellant on the pleadings that the Civil Court would have no jurisdiction in a matter like present and in any case, punishment could not be said to be shockingly disproportionate. The

trial court, after recording evidence and hearing the parties held that the plaintiff was guilty of misconduct, however, interfered with the punishment observing that there was non-application of mind. The trial court ordered that the disciplinary authority would be free to pass appropriate order of punishment. Both the parties felt aggrieved by the said order, the State Government filed Civil Appeal No. 122 of 1982, while the plaintiff filed Civil Appeal No. 125 of 1982. Both the appeals were simultaneously heard. Both the appeals came to be disposed of on 13.8.84. The appeal filed by the State Government was dismissed, but the appeal filed by the plaintiff was allowed with a direction that the authority could not award such punishment against Class-IV employee, the order was bad and the defendant was directed to reinstate the plaintiff and period of absence from 24.9.79 till reinstatement was directed to be treated as uninterrupted for purposes of retiral benefits etc. The State being aggrieved by the two orders passed in those two appeals

has filed the present appeal.

3. The appeal has been admitted without framing any question. Ordinarily, while admitting the appeal, High Court shall frame questions and if such questions have not been framed, then, at the time of final hearing, the High Court is obliged to frame questions. I will take up both the appeals on following substantial question of law:

> *"[1] Whether on the facts and in the circumstances of the case, the courts below, even after holding that the plaintiff was guilty of misconduct, were they entitled to interfere with the proceedings and direct the disciplinary authority to consider the question of awarding punishment afresh?*
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> *[2] Whether on the facts and in the circumstances of the case, Civil Court, without holding that the procedure prescribed under the law was not followed or principles of natural justice were violated, could set aside the proceedings and direct reinstatement of the plaintiff?"*

4. The trial court, in its judgment has held that

the respondent-plaintiff was guilty of misconduct. Once the trial court held that the plaintiff was guilty of misconduct, then, it was left with no jurisdiction to interfere in the proceedings, because, the disciplinary proceedings are within the domain of the disciplinary authority and the Civil Court cannot interfere unless it holds that the proceedings were conducted without jurisdiction, provisions of law were violated and the authority had no jurisdiction or principles of natural justice were not observed. In the present case, the appellate court has relied upon certain judgments of this Court and the Supreme Court to make observations that if there is any statutory instruction prescribing a minimum penalty for any specified misconduct which is grossly disproportionate, which leaves no discretion with the disciplinary authority, such action and order thereunder will be exposed to the risk of challenge under Article 14 of the Constitution of India. The Court has also relied upon some other judgment which was

delivered by the High Court and the Apex Court, in civil jurisdiction or appellate jurisdiction. So far as the jurisdiction of the High Court or the Supreme Court is concerned, there can be no challenge to the same if they propose to exercise their powers under Articles 226 or 32 of the Constitution. But a Civil Judge or Additional District Judge would not be entitled to interfere with the order of the disciplinary authority simply because he finds that the order runs contrary to Article 14 of the Constitution. The learned Judge has, nowhere stated that under what authority of law, he was exercising powers under Article 14 or Article 226 of the Constitution. The learned Judge has also observed that as the plaintiff was out of job for five years and was petty employee, it would be necessary to direct reinstatement. I fail to understand that how could delay of five years provide solace in favour of the plaintiff. In the system, one is required to decide the matter on strength of the legal issue, legal authority and jurisdiction and should not be swayed away

by sympathy or any such thing. Once it was held by the courts that the plaintiff was guilty of misconduct, then they could not interfere with the question of punishment.

5. In the opinion o this Court, the courts below were absolutely unjustified in decreeing the suit and directing reinstatement of the plaintiff.

6. The questions framed above are decided in favour of the appellant-defendant. Both the appeals are allowed and the judgment and decree passed by the two courts below are set aside and the suit is dismissed in toto. No costs.

7. I am told that as there was no stay from this Court, the plaintiff might have been reinstated and by now must have retired. Even if that be so, dismissal of the plaintiff and the order of this Court shall adversely affect his retiral benefits. I make it clear that when he was reinstated and was paid for the work done by him, then, said amount would not be recovered back, but in view of the dismissal, he would not be entitled to any retiral benefits.

8. Let decree be drawn accordingly in each of the appeal.

[R.S. GARG, J.]

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